

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 30485 of 2006(D)

PETITIONERS:

- 1. GEETHA M.R.,
T.C.NO.1141/1, NEELAMBARAM, MURINJAPALAM,
KOONAMKULAM LANE, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM-695 011.**
- 2. LATHA C.,
IV/36, V.S.S.C. HOUSING COLONY,
ST.XAVIER'S COLLEGE P.O.,THIRUVANANTHAPURAM-695586**

**BY ADV. SRI.VADAKARA V.V.N.MENON
SRI.T.N.SUKUMARAN**

RESPONDENTS:

- 1. THE KERALA PUBLIC SERVICE COMMISSION,
PATTON PALACE P.O., THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY.**
- 2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT,GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.**

**R1 BY ADV.SRI.ALEXANDER THOMAS, SC, PSC.
R2 BY GOVT. PLEADER SRI.R.LAKSHMINARAYANAN.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27/09/2007, ALONG WITH WPC NO. 28011 OF 2005 AND OTHER
CONNECTED CASES THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

PETITIONERS' EXHIBITS:-

- Ext.P1:** Copy of the Admission Ticket with Reg.No.S.100113 issued by the 1st respondent to the 1st petitioner.
- Ext.P2:** Copy of the Admission Ticket with Reg.No.S.102538 issued by the 1st respondent to the 2nd petitioner.
- Ext.P3:** Copy of the Question Booklet with No.252/2006 issued by the 1st respondent to the 1st petitioner.
- Ext.P4:** Copy of the News item published by Kerala Kaumudi dtd.9.10.2006.
- Ext.P5:** Copy of news item published by Mathrubhoomi dtd.4.6.2006.
- Ext.P6:** Copy of editorial dtd.3.9.2005 published by the Mathrubhoomi Thozhilvartha.
- Ext.P7:** Copy of the representation dtd.26.9.2006 jointly submitted by the petitioner along with similar other candidates to the Chairman of the 1st respondent with copy of the same to its Secretary.
- Ext.P8:** Copy of the front page of the Malayalam News paper Kerala Kaumudi dtd.21.5.2006.
- Ext.P9:** Copy of certificate dtd.24.11.2006 issued by Sri.J.Jayakumar HOD of Zoology, Maharaja's Govt. College for Women.
- Ext.P10:** Copy of the front cover page along with page Nos.282, 223, 235, 246, 270, 272, 276, 280, 268, 300 and 455 of the Book Cell Biology Genetics Molecular Biology.
- Ext.P11:** Copy of the page No.110 of the Book namely Text Book of Botany by Vijayakumar.
- Ext.P12:** Copy of the front cover page along with page Nos.391, 308 and 241 of the Book 'A Manual of Zoology'.
- Ext.P13:** Copy of PSC Bulletin dtd.1.10.2006 along with the Answer Keys prepared by the 1st respondent in connection with the written test dated 15.9.2006 for the post of HSST (Junior) Zoology.'
- Ext.P14:** Copy of the front cover page with page No.519 of the Book 'Biological Science' edited by R.Soper.
- Ext.P15:** Copy of the front page along with page No.187 of the Book Cell Biology, Genetics, Molecular Biology.

(Contd.....)

- Ext.P16:** Copy of the front page along with page No.8.18 of the Book Systematic approach to Zoology.
- Ext.P17:** Copy of the front cover page along with page Nos.430 and 431 of the Book Cell Biology, Genetics Molecular Biology.
- Ext.P18:** Copy of the front cover page of the Book Environmental Biology Ethology Evolution along with page No.108 of the said book.
- Ext.P19:** Copy of the front cover page of the book 'Animal Ecology & Distribution of Animals' along with page No.315 of the said book.
- Ext.P20:** Copy of the front cover page of the Book Biological science with page Nos.77 and 216 of the said Book.
- Ext.P21:** Copy of the front cover page of the Book Environmental Biology Ethology and Evolution along with page No.93 of the said book.
- Ext.P22:** Copy of the front cover page of the Book Animal Ecology and Distribution of Animals with page Nos.82 and 83.
- Ext.P23:** Copy of the order dtd.8.9.2005 passed by this Hon'ble Court in WP(C)No.26415/2005-T.
- Ext.P24:** Copy of the order dtd.13.3.2006 passed by this Hon'ble Court in WP(C)No.26415/2005-T.
- Ext.P25:** Copy of the last page of Ext.P7 which contain the names and signatures of the candidates who submitted Ext.P7.
- Ext.P26:** Copy of the cover page of the Book Cell Biology genetics Molecular Biology with page No.292 of the same.
- Ext.P27:** Copy of the cover page of the book introductory Mycology with page Nos.446 and 447 of the same.
- Ext.P28:** Copy of the cover page of the book Fundamentals of plant Physiology with page Nos.192 and 193 of the same.
- Ext.P29:** Copy of the cover page of the book Cell Biology Genetics Molecular Biology with page No.464 of the same.
- Ext.P30:** Copy of the cover page of the Book systematic approach to Zoology with page Nos.10-14 and 10.15.
- Ext.P31:** Copy of the cover page of the book Animal Ecology and Distribution of Animals with page Nos.314 and 315.

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Ext.P32: Copy of the cover pages of the books Comprehensive Biology and Biological Science with page Nos.2 to 7 and 1 and 2 respectively.

Ext.P33: Copy of the question booklet with Alpha Code 'A'.

Ext.P34: Copy of PSC Bulletin Book No.17 dtd.15.7.2006 front page and page No.23 of the same.

Respondents' Exhibits:- Nil.

(true copy)

P.S. TO JUDGE.

Kvs/-

K. M. JOSEPH, J.

W.P.C. NOS. 30485/06 D & 8964/07 P

Dated this the 4th April, 2007

REFERENCE ORDER

These two Writ Petitions being connected, they are considered together.

Petitioners are candidates who applied pursuant to the Notification of the Public Service Commission for selection to the post of HSST, Zoology (Junior). The complaint of petitioners appears to be that twentysix questions are clearly out of the syllabus. They have a case also that for many of the questions, the answers given are incorrect. The stand taken by the Commission as revealed from its Counter Affidavit in W.P. (C). No.30485/06 is that the complaint is without any merit. It is its case that expert opinion was taken in the matter relating to the questions being out of syllabus on the basis of certain representations and Experts have opined that operative concept and gene regulation strictly come under the head “Cell and Molecular Biology” and hence it includes in the Syllabus.

In fact, in W.P.(C) No.30485/06 the complaint originally appeared to be that the questions were out of syllabus. Later on, in the Reply Affidavit, a contention was taken that the answers given to some of the questions were also erroneous. Later, this Writ Petition stood amended wherein a contention that the answers given were incorrect also was taken. Petitioners have produced a large number of documents which are Extracts from Books in an attempt to show that the questions are out of syllabus, and that answers are incorrect. In particular, it is pointed out that several questions relate to the Subject Genetics. They would say that Cell Biology, Genetics, Molecular Biology are three different Subjects. They would point out the syllabus in Ext.P1(a) admission ticket to show that Genetics is not specifically included in the syllabus. In other words, it is contended that Question Nos. 6, 9, 17, 18, 19, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 are from Genetics. Likewise, questions Nos.4, 31 and 32 are from classification and question No.30 is from Thermo Dynamics, it is their case. So also, they

say that questions Nos. 13, 24, 65, 93 and 94 are from Botany. This is denied as incorrect by the Commission. One of the prayers in the Writ Petitions is for the appointment of an Expert Committee so that a Report could be obtained in the matter. Learned standing counsel for the Public Service Commission would point out that this is a question which is covered by a Bench decision of this Court in State of Kerala v. Fathima Seethi (2002 (3) KLT 871). The Division Bench while considering a case under the Entrance Examination, had this to say:

“The Court has to examine if the decision making process has been vitiated on account of illegality, arbitrariness and mala fides - both legal and factual. Absent these factors, the Court must refrain from interfering with the decision taken by the administrative authority, whatever its personal predictions....While we appreciate the keen efforts taken by the learned Single Judge in appointing experts to advise him, and commend the pains taken by him in studying the subjects and deciding the correctness of each

disputed answer, we are afraid that the jurisdictional limits of judicial review were not observed. As already pointed out, it is not the function of this Court to decide what should be the correct answers to the multiple choice questions. This is not a case where there is any mala fides or improper motives alleged against the Commissioner. Nor is there any illegality alleged. The Commissioner, bona fide, accepted the advice tendered to him by the experts appointed by him. It is not as if the credentials of the said experts is under challenge or any mala fides are attributed to the experts themselves. In a situation like this, it would have been preferable to leave the matters where they lay. We see that appointing of further experts by the learned Single Judge produced no better results and only added to the confusion which prevailed.”

Counsel also relied on the decision in Kanpur University and Others v. Samir Gupta and Others (AIR 1983 SC 1230). In the said decision, the Apex Court held as follows:

“It is true that the key-answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct.”

Of course, counsel for the Commission would point out that interference in these matters will create difficulties for the candidates and if orders are passed staying the selection process, it will create grave injury to the candidates. It is, of course, pointed out that the Commission itself is seized of the matter and the Commission has not yet prepared the short list.

2. Petitioners rely on Ext.P23 order of this Court wherein a learned Single Judge of this Court had taken the view that the third expert be entrusted with the duty to have at least a random

scrutiny of the answer papers. It is followed up by Ext.P24 order. It would appear that a Division Bench of this Court did not interfere with the order in Writ Appeal No. 1986/05. If that be so, I am faced with two decisions of two Division Benches. Undoubtedly, it is true that the counsel for the Commission points out that Exts.P23 and P24 were only interim orders and the Division Bench had only confirmed the interim order while the Judgment in State of Kerala v. Fathima Seethi (2002 (3) KLT 871), is a case of final disposal. I would think that the candidates are entitled to look to the Syllabus and prepare themselves for the examination on the basis of the questions which may arise under the syllabus. I cannot say that the complaint of the petitioners is without the support of any material. I would think that in such circumstances, it would be more appropriate that the questions be considered by a Division Bench. Accordingly, I adjourn these cases for being heard by a

Division Bench.

Place these cases before The Honourable the Acting Chief Justice for urgent Orders on posting, as the counsel seeks a stay of publication of the short list.

K. M. JOSEPH, JUDGE

kbk.